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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,494	04/13/2001	Andreas Schade	CH919990043US1 (590.041)	3573
35195	7590	10/24/2005		EXAMINER
				REAGAN, JAMES A
			ART UNIT	PAPER NUMBER
			3621	

DATE MAILED: 10/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/834,494	SCHADE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	James A. Reagan	3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 June 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-16 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date, \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

**Status of Claims**

1. This action is in reply to the response filed on 22 June 2005.
2. Claims 1-16 have been examined.

**RESPONSE TO ARGUMENTS**

3. Applicant's arguments received on 22 June 2005 have been fully considered but they are not persuasive. Referring to the previous Office action, Examiner has cited relevant portions of the references as a means to illustrate the systems as taught by the prior art. As a means of providing further clarification as to what is taught by the references used in the first Office action, Examiner has expanded the teachings for comprehensibility while maintaining the same grounds of rejection of the claims, except as noted above in the section labeled "Status of Claims." This information is intended.

The Examiner recognizes the bidirectional quality of the claimed CORBA structure as disclosed in the background of the specification. However, these characteristics are not clearly brought out in the claim language. As such, with regard to the Applicant's assertions that the prior art of record does not fairly teach or disclose each and every limitation contained within the claims, it appears as if the Applicant is reading limitations into the claims from the specification. Consequently, the points argued are not recited in the claims themselves. For that reason, a solid argument in their contemplation cannot be established. Subsequent amendments to the claim language that would include the positions presented by the Applicant's arguments would provoke the Examiner to address the claims individually and as a whole, in light of the remaining limitations as well as the specification. Until such amendments are rendered, the arguments are disregarded and will not be countered.

In summary, the Examiner has taken the broadest and most reasonable interpretation of the claim limitations as written, in light of the specification. Although the specification may contain recitations of intended use, alternative points of view and subjective interpretative differences between the prior art of record and the present invention as premeditated, it is the claims themselves that are given patentable weight only inasmuch as they are constructed. Because the claimed invention has been painted with the broad stroke of petitioning for limitations that encompasses more than is asserted in the Applicant's claims, the prior art of record continues to fully disclose the Applicant's inventions as *claimed*.

Continuing, it is troublesome to the Examiner that the Applicant appears to be ignoring the Ferstenberg reference with regard to the bi-directional nature of the electronic negotiation as clearly disclosed by Ferstenberg. It appears as if the Applicant is attacking the references in a piecewise fashion, instead of in combination, as intended by the Examiner and as shown below in the rejections under 35 USC § 103(a). As shown, Ferstenberg's disclosure is directed to electronic negotiations for conducting trade between two parties including a third party intermediary, disclosing up-to-the-moment pricing of commodities as well as broadcasting quote feeds i.e. ticker (see at column 44, lines 28-63), updates of offers and counter-offers during the electronic negotiation (see at least column 56, lines 29-33), and optimizing the matching process between a buyer and seller with regard to the parameters set by each (see at least column 2, lines 1-23). Accordingly, a bidirectional negotiation is clearly disclosed.

With regard to claims 5, 9, 13, and 14, the common knowledge declared to be well-known in the art is hereby taken to be admitted prior art because the Applicant either failed to traverse the Examiner's assertion of Official Notice or failed to traverse the Examiner's assertion of Official Notice adequately. To adequately traverse the examiner's assertion of Official Notice, the Applicant must specifically point out the supposed errors in the Examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. A general allegation that the claims define a patentable invention without any reference

to the Examiner's assertion of Official Notice would be inadequate. Support for the Applicant's assertion of should be included.

**Claim Rejections - 35 USC § 103**

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferstenberg et al. (US 5,873,071 A) in view of Applicant's own admission.

**Examiner's note:** Examiner has pointed out particular references contained in the prior art of record in the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the *entire* reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

**Claims 1, 2, 10, 11, 12, 15, and 16:**

With regard to the limitations of:

*a) receiving from the client device a client requirement comprising constraint data in standard CORBA constraint language, indicative of a set of required product*

*features, and at least one updatable feature data element, indicative of a variable required product feature, which includes address data indicative of a location from which a current specification of the variable feature can be obtained by the trader device in response to an update request from the trader device;*

*b) comparing the constraint data and the feature data; and*

*d) determining that a match exists between the client requirement and the supplier offer if said feature data corresponds to said constraint data and said negotiation success condition is satisfied;*

- *step (b) comprises comparing the constraint data of the client requirement with the feature data of the supplier offer and comparing the constraint data of the supplier offer with the feature data of the client requirement; and*
- *in step (d), it is determined that a match exists if said negotiation success condition is satisfied and the feature data of the supplier offer and client requirement corresponds to the constraint data of the client requirement and supplier offer respectively.*

In the background of the specification, Applicant discloses that these limitations as already known in the art (see at least pages 1-3).

Applicant does not specifically disclose c) *repeatedly issuing update requests to obtain current specifications for said updatable feature data elements of the supplier offer and the client requirement and determining whether a negotiation success condition, dependent on said current specifications, is satisfied, until said negotiation success condition or a negotiation termination condition is satisfied.* Ferstenberg, however, in an analogous disclosure directed to electronic negotiations for conducting trade between two parties including a third party intermediary, discloses up-to-the-moment pricing of commodities as well as broadcasting quote feeds i.e. ticker (see at column 44, lines 28-63), updates of offers and counter-offers during the electronic negotiation (see at least column 56, lines 29-33), and optimizing the matching process between a

buyer and seller with regard to the parameters set by each (see at least column 2, lines 1-23). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Ferstenberg with the Applicant's own admission because this provides a system in which buyers and sellers may quickly and efficiently be matched together to promote active trade between each.

**Claims 3 and 4:**

With regard to the limitations of:

- *negotiation success condition is defined by said constraint data, and*
- *negotiation success and termination conditions are predetermined in the trader device.*

In the background of the specification, Applicant discloses that these limitations as already known in the art (see at least page 2, lines 13-18). Ferstenberg also discloses these limitations by disclosing the commodities trading system as shown in the rejections above.

**Claim 5:**

With regard to the limitation of *performing step (b) prior to performing step (c)*, the combination of Ferstenberg/Applicant discloses the commodities trading system as shown in the rejections above. Applicant/Ferstenberg do not specifically state the order in which the steps are processed. However, Examiner takes **Official Notice** that it is old and well known in the commodities trading arts to compare constraint data before conducting a matching buy/sell because this ensures that the buyer and the seller are both agreeable to the terms and conditions of the sale, ensuring a mutually rewarding transaction.

**Claim 6:**

With regard to the limitation of *when issuing a said update request for at least a second and subsequent current specification for said updatable feature data element of one of the supplier offer and client requirement, the most recent current specification for said updatable feature data element of the other of the supplier offer and client requirement is included in the update request*, Ferstenberg, in column 4, lines 45-57 discloses storing concurrent and preceding bounds, essentially disclosing a record of the current offers and bids, and an update record of existing and proposed bids and offers for the commodity transaction. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Ferstenberg with the Applicant's own admission because this provides a system in which buyers and sellers may quickly and efficiently be matched together to promote active trade between each, as well as providing a record of transactions and bid/offer histories to protect against abuse of the trading system.

**Claim 7:**

With regard to the limitations of:

- *(c1) issuing a said update request to obtain a new current specification of said at least one updatable feature data element of one of the supplier offer and client requirement, determining whether the negotiation success condition is satisfied, and if not*
- *(c2) issuing a said update request to obtain a new current specification of said at least one updatable feature data element of the other of supplier offer and client requirement, determining whether the negotiation success condition is satisfied, and if not*
- *(c3) repeating steps (c1) and (c2) until one of the negotiation success condition and the negotiation termination condition is satisfied.*

The combination of Ferstenberg/Applicant implicitly discloses the back and forth process of matching bids to offers during the commodities trading sessions as shown above, as well as successful matches and unsuccessful matches between various suppliers and a client that end either with the termination of the matching process or contract fulfillment.

**Claim 8:**

With regard to the limitation of *at least one of the supplier offer and client requirement includes a plurality of said updatable feature data elements, and the negotiation success condition is dependent on the current specifications for a subset of the updatable feature data elements of the supplier offer and client requirement, and wherein step (c) is performed only for the updatable feature data elements of said subset,* the combination of Ferstenberg/Applicant discloses trading of commodities, essentially disclosing a variable price and size of the commodity, each of which are typically updated as other buyers and sellers complete transactions, effectively altering the bid/offer for price and size of the commodity.

**Claim 9:**

With regard to the limitation of *data indicative of the supplier offer is transmitted to the client device when a match exists between the supplier offer and the client requirement,* the combination of Ferstenberg/Applicant discloses the commodities trading system as shown in the rejections above. Applicant/Ferstenberg do not specifically state that a message is sent between buyer and seller of possible matches. However, Examiner takes **Official Notice** that it is old and well known in the commodities trading arts to compare constraint data before conducting a matching buy/sell and then informing a potential buyer of a seller who matches the criteria set forth by the buyer because this provides the buyer with the opportunity to either go through with the transaction or to neglect the sale as the buyer sees fit.

**Claims 13 and 14:**

With regard to the limitation of:

- *the supplier device includes said supplier feature updater*
- *the client device includes said client feature update means,*

The combination of Ferstenberg/Applicant discloses the commodities trading system as shown in the rejections above. Applicant/Ferstenberg do not specifically disclose buyer and seller update means. However, Examiner takes **Official Notice** that it is old and well known in the commodities trading arts to provide a mechanism wherein buyers and sellers may update their bid and asking process and sizes as they see fit during trading sessions.

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **James A. Reagan** whose telephone number is **571.272.6710**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **James Trammell** can be reached at **571.272.6712**.

*Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> . Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866.217.9197 (toll-free).*

Any response to this action should be mailed to:

**Commissioner of Patents and Trademarks**  
**Washington, D.C. 20231**

or faxed to:

**571-273-8300** [Official communications, After Final communications labeled "Box AF"]

**571-273-8300** [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to the **United States Patent and Trademark Office Customer Service Window:**

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JAMES A. REAGAN

Primary Examiner

Art Unit 3621

19 October 2005

